

# Jurisdiction for Alaska Tribes: The current picture



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# What is Jurisdiction?

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Responsibility





# Inherent Authority



Alaska Tribal Governments have the authority under their Inherent Sovereignty to create and implement a tribal justice system.

- The United States federal government has recognized the inherent sovereignty of Indian nations to **“make their own laws and to be ruled by them.”** (Williams v. Lee, 358 U.S. 217, 1958.)

# Inherent Authority



“Do Alaska Native villages **have inherent, non-territorial sovereignty** allowing them to resolve domestic disputes between their own members?... we hold that **Alaska Native tribes, by virtue of their inherent powers as sovereign nations, do possess that authority.**”

-Alaska Supreme Court in John v. Baker

# Ways to categorize Jurisdiction



## 1. Territorial Jurisdiction

The territory (land) a government can exercise authority over. For tribal governments this is called 'Indian Country'

## 2. Membership-based jurisdiction

The people a government can exercise control over.

# Tribal Authority over People: Membership-based Jurisdiction



- In September of 1999, the Alaska Supreme Court recognized tribal jurisdiction over tribal members in the area of domestic relations even in the absence of Indian country (*John v Baker*). In August 2001 the Supreme Court also recognized tribal jurisdiction over child protection in the C.R.H. case.

- **“Federal tribes derive the power to adjudicate internal domestic matters, including child custody disputes over tribal children, from a source of sovereignty independent of the land they occupy.”**

- Ak Supreme Court in *John v. Baker*

# Examples of Domestic Relations cases heard by Alaska Tribal Courts:



- Child Custody
- Child Protection
- ICWA
- Adoptions
- Marriages/Divorces
- Probate/Inheritance
- Cultural protections







**The custody dispute between Ms. John and Mr. Baker lies at the core of sovereignty -- a tribe's "inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members." By deliberately leaving the door open for tribal governments to conduct internal self-governance functions in the absence of Indian country, [The US Supreme Court] suggest that Northway Village has jurisdiction to hear this dispute because the right to determine custody of Indian children..."infringes on tribal self-governance."**

•Alaska Supreme Court in John v Baker

# Tribal Authority over People: Membership-based Jurisdiction



In addition to specifically recognizing tribal court jurisdiction over members, the Alaska Supreme Court *John v Baker* decision makes a lot of referrals to the U.S. Supreme Court case *Montana v United States* 1981.

**In *Montana v Unites States*, the US Supreme Court acknowledged that tribal courts have some inherent civil authority over people whose actions affect tribal interests such as:**

- 1. The political integrity of the tribe, the economic security of the tribe, or the health and welfare of the tribe or members**

**Or ,**

- 2. A person who enters into a consensual relationship with the tribe or tribal members.**

# Examples of other cases heard by Alaska Tribal Courts:



Tribal Courts hear cases protecting the Health and Welfare of the Tribe or Tribal members:

- Domestic Violence
- Assault/Disorderly conduct
- Juvenile Delinquency
- Vandalism
- Violation of Firearm Ordinances
- Trespass
- Alcohol Regulation



# Examples of other cases heard by Alaska Tribal Courts:



Tribal Courts also hear cases involving people who enter into a consensual relationship with the Tribe or tribal member.

What is a consensual relationship?

- A personal relationship like marriage
- A business or contractual relationship
- Anyone who consents to tribal jurisdiction
  - Signed consent
  - Implied consent-someone who moves into Alaska Native village consents to following community rules



**“Tribes ‘have power to make their own substantive law in internal matters, and to enforce that law in their own forums.’ And tribal courts may also have jurisdiction to ‘resolve civil disputes involving nonmembers, including non-Indians’ when the civil actions involve essential self-governance matters such as membership or other areas where ‘the exercise of tribal authority is vital to the maintenance of tribal integrity and self-determination.’”**

•Alaska Supreme Court in *John v. Baker*



# Concurrent (shared) jurisdiction:

In Alaska, most jurisdiction is shared between the State and Tribes. Child Custody is an example of shared jurisdiction with both the state and the tribes having jurisdiction over the custody of Native children until one or the other begins a particular case. Domestic Violence is another example.



◆ **“By acknowledging tribal jurisdiction, we enhance the opportunity for Native villages and the state to cooperate in the child custody arena by sharing resources. Recognizing the ability and power of tribes to resolve internal disputes in their own forums, while preserving the right of access to state courts, can only help in the administration of justice for all.”**

-Alaska Supreme Court in John v. Baker

# Tribes can enforce their laws through culturally appropriate justice systems



The only requirement is that the Tribe have Jurisdiction and that the Tribal Justice System provide “Due Process”

1. Notice
2. Opportunity to to be heard
3. Fair and impartial hearing



**“But this Due Process analysis in no way requires tribes to use procedures identical to ours in their courts. The Comity analysis is not an invitation for our courts to deny recognition of tribal judgments based on paternalistic notions of proper procedure. [state] courts should strive to respect the cultural differences that influence tribal jurisprudence, as well as to recognize the practical limits experienced by smaller court systems.”**

-Alaska Supreme Court in John v. Baker

If your Tribe has jurisdiction and if your tribe provides Due Process, the State of Alaska will respect the decision of your justice system!



# Tribal Jurisdiction in Alaska: Review



## **Tribes have jurisdiction over their members.**

**According to the Alaska Supreme Court in *John v. Baker*, tribes have jurisdiction over tribal members in the area of domestic relations.**

**Good legal arguments exist to support tribal jurisdiction over any person who:**

- 1. enters a consensual relationship with the tribe or tribal members, or**
- 2. whose activities affect the health and safety of the tribe or tribal members, the economic security of the tribe, or the political integrity of the tribe.**



# Tribal Jurisdiction: final thoughts from the Alaska Supreme Court:



**“[T]ribes have the ‘power to make their own substantive law in internal matters and to enforce that law in their own forums.’ Similarly, the Supreme Court has stressed that tribal sovereignty is valuable precisely because it enables Native Americans ‘to control their own internal relations, and to preserve their own unique customs and social order.’ Because Alaska Native tribes have inherent sovereignty to adjudicate internal tribal disputes, the tribes must be able to apply their tribal law to those disputes. Thus, tribal sovereignty over issues like family relations includes the right to enforce tribal law in resolving disputes.”**

•Alaska Supreme Court in John v Baker

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